

Oversight Council for Improving Criminal Justice Responses for Persons with Mental Illness

- Senator Reynold Nesiba
- Melissa Klemann
- Betsy Doyle
- Terry Dosch
- Shane Penfield
- Greg Sattizahn
- Tom Stanage
- Representative Duba
- Laura Ringling
- Commissioner Heiberger
- Senator Rusch
- Rep. Reed
- Sheriff Milstead
- Judge Carmen Means

Introduction

Mr. Sattizahn called the meeting to order at 10am. He introduced the newest member, Laura Ringling, who represents the Department of Social Services.

SB 173 Discussion

Ms. Doyle opened a discussion about SB 173, which was signed into law last year. SB 173 gave an avenue for judges to consider if there was a substantial probability for competency and dismiss cases in circumstances where a client would never be deemed competent--for example, individuals with low IQs or individuals with cognitive disabilities who are not capable of being restored. The law was geared towards individuals with severe mental illnesses that cannot be treated, such as bipolar disorder and schizophrenia. Ms. Doyle said she has had cases dismissed following the passage of SB 173 and sees this as a positive change for the judicial system.

Mr. Sattizahn asked her if she had a feel for how this was working statewide and if Pennington was using it. Ms. Doyle responded that the Minnehaha process was discussed the previous week at a criminal defense lawyers meeting, but Pennington was not discussed. Mr. Dosch reminded the Council that this was brought by Senator Wheeler, who is also the chair of board of mental illness in Beadle county. He proposed it as a way to diminish the amount of time someone must wait when there is no consideration of other options.

Mr. Sattizahn gave an overview for a meeting that had occurred between the board chairs to discuss what their challenges were and how the UJS and DSS could best support their work. Across the state, practice varied. The Presiding Judges, who appoint the board chairs, asked Mr. Sattizahn to create an educational plan to help support the boards and encourage uniformity across the state. While the meeting did not directly stem from the Oversight Council's work, the discussion is still relevant to the overall purpose of the council and Mr. Sattizahn reported that he would continue updating the group. Ms. Ringling added that the meeting was enlightening. While the statutes provide the general framework, there is not enough detail to make it consistent across the state.

Circling back to Ms. Doyle's earlier comments, Ms. Ringling asked Ms. Doyle who the providers were for the individuals who had their cases dismissed. Ms. Doyle said she believed they were residing at VOA. HSC recognized right away that they were unable to provide services because the individuals did not have medication-based treatment. The two cases were originally in Redfield, but then there was the request to transfer them to VOA. In the last case, the judge was intentional about it and wrote the dismissal with a date so the state would have notice of release and could file paperwork for a civil commitment if necessary.

Senator Nesiba inquired as to how long the wait is at Redfield. Ms. Ringling responded that she would follow-up with the Department of Human Services. Ms. Doyle said that from her perspective, the wait is different based on the circumstances. Competency tends to take more time, as they try to find a different option first so beds are available at Redfield for emergencies. Ms. Doyle said that they do an excellent job at making sure they abide by rules and judges. Dr. Stanage said that as part of the commitment process for developmental disabilities, DHS is required to investigate community-based options before placing at Redfield.

Leading Reform: Competence to Stand Trial Systems Article

Mr. Sattizahn said that the Council on State Court Administrators has been working on competency for several months as part of their national initiative. The problems South Dakota faces are not unique, and similar concerns are seen across the nation.

He walked through the article and pointed out the parts most relevant to South Dakota.

- Drawing the line between felonies and misdemeanors for competency evaluations
- Alternative evaluation locations
- The timeline for competency evaluation completions
- System efficiencies
- Data collection

Sheriff Milstead called the group to review the points listed on page 9. The Minnehaha County jail has weekly meetings to discuss if the individuals coming into jail have a more acute clinical treatment need. If it is not appropriate, they do not have them seek treatment in jail. There are 3 participants undergoing competency evaluations, and all 3 individuals are on medications to manage their conditions. Their medical provider is Correctional Medical Management. The people in jail meet with the mental health counselors and HSC to make sure that they are on the appropriate medications and that there is follow-up in the process. Sheriff Milstead said his jail works closely with HSC because some of the people in the Minnehaha County Jail will be transferred to HSC and they want there to be good continuity. There is also a good working relationship with The Link for continuity of care. Sheriff Milstead drew extra consideration to the last point about jail restoration. He said his jail will continue to do so until the reforms are completed to bridge the gap until a more permanent solution is available. Restoration in Minnehaha County Jail frees up approximately 45 bed days at HSC.

Representative Reed asked Sheriff Milstead who determines where the individual is placed. Sheriff Milstead responded that DSS and HSC make the decision—the judge does not choose.

Ms. Doyle added that with a finding of incompetency, it only allows for commitment to HSC or a facility approved by HSC. When a commitment is made, the law allows for HSC and HSC to say they are unable to do anything because it is not a medication-based treatment.

Ms. Ringling responded that when they receive an order for competency restoration, they ask for and review the medical records to determine the most appropriate setting. If the person needs in-patient psychiatric care, those individuals go to HSC. DSS also contracts with Avera Behavioral Health for in-patient. If the person does not need a high level of care, a jail-based restoration may be appropriate. If the person is eligible to bond out, they can be served by a local mental health provider. The final decision is made in conjunction with whatever program is most appropriate.

Representative Reed asked who the advocate is for the inmate to make sure they are receiving services and the timeline is appropriate. Ms. Ringling responded that there is a lot of engagement with the defense counsel, who is still working with their client at this point. Ms. Doyle said that the attorneys do their best to advocate. While attorneys are not necessarily experts in mental health services and cannot comment on the therapeutic standpoint, they are able to advocate in other ways. However, the level of engagement is up to the attorney.

Representative Duba asked what a week in the life looks like for someone undergoing competency restoration in jail. Dr. Stanage said that for cases dealing with a mental illness, arranging for the appropriate medication is critical. The restoration process is an educational process—the provider takes the person through the understanding of everyone’s role in the criminal justice system. It is a detailed bases to get the person to the point where they understand the process and can assist the attorney.

Representative Duba asked if, while in jail, the education occurs every day. Ms. Ringling said that they have a workbook with this information she could provide. Sheriff Milstead said that it is not an intensive all-day training experience. There is the workbook, time with the counselor, and medication. The individual does have a lot of normal time in their environment.

Ms. Duba asked if the individuals were in the general population or in a separate area. Sheriff Milstead answered that the recommendation is not to isolate individuals who are being restored, but to leave them in the general population. There would not be enough room for all the classifications that would be necessary if they were segregated.

Representative Duba asked how the legislature could help.

Ms. Ringling responded that from the DSS perspective, their focus is on the crisis response system. They want to serve people earlier, so they are not driven deeper into the criminal justice system.

Representative Duba agreed that early intervention is key. She reminded the council that she and Senator Nesiba were on appropriations and asked the council to please let them know how they can best advocate.

Sheriff Milstead said that for the past few decades there has always been a bed shortage, and that problem is not going to ever go away. He wondered if regional facilities would help alleviate the pressure. He asked that the legislature consider regional facilities or help with competency restoration. Dr. Stanage agreed and thought this would greatly help HSC.

Mr. Dosch said the secret is to have people in the right place at the right time. It is a “pay me now or pay me later” investment. He also asked the council to consider how far the system has progressed in the past few years. He suggested to Representative Duba that they focus on the initiatives that are already being developed, as small efforts add up over time.

Annual Report

Mr. Sattizahn walked the council through the draft annual report.

Comments

- Senator Nesiba recommended adding language to the section on the Link to make it clear there were many funding sources.
- Representative Reed recommended adding a section about VCC. He also noted that he like the new and succinct layout.
- Several members asked for more explanations about what the various law enforcement training covers.

Next Steps

Mr. Sattizahn recommended having the education coordinator at DCI attend to talk about the training efforts. He said that the next meeting would be in the spring, unless any member felt that a meeting was necessary before that time and wanted to meet.